

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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THOMAS JAMES FOX,

Case No. 18-cv-2166 (JRT/LIB)

Petitioner,

v.

**REPORT AND RECOMMENDATION**

STATE OF MINNESOTA,

Respondent.

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This matter comes before the undersigned United States Magistrate Judge pursuant to a general assignment in accordance with the provisions of 28 U.S.C. § 636 and Local Rule 72.1, as well as, upon Petitioner Thomas James Fox's Motion for Extension of Time, [Docket No. 1], which he appears to, at least partially, characterize as a petition for writ of habeas corpus.

Petitioner requests additional time in which to file a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (See, Motion [Docket No. 1]). That request must be denied.

The limitations period for the filing of habeas petitions is established by statute, see, 28 U.S.C. § 2244(d), and the Court is without authority to extend that statutory limitations period. Further, although equitable tolling of the statutory limitations period is available to petitioners under certain circumstances, the Court may permit equitable tolling only where a petitioner can show that he has diligently pursued his rights. See, Earl v. Fabian, 556 F.3d 717, 722 (8th Cir. 2009). The Court cannot know whether Fox was diligent in timely pursuing his rights through the time he files his habeas petition until he actually files that petition.

Accordingly, Fox's Motion for an Extension of Time, [Docket No. 1], must be denied. It is further recommended that since the Motion for an Extension of Time is the only relief sought in

this case, denial of that motion disposes of this present matter and the case should therefore be closed.<sup>1</sup>

Therefore, based on the foregoing, and on all of the files, records, and proceedings herein, **IT IS HEREBY RECOMMENDED THAT** Fox's Motion for an Extension of Time, [Docket No. 1], be **DENIED**.

Dated: August 8, 2018

s/Leo I. Brisbois  
Leo I. Brisbois  
United States Magistrate Judge

### **NOTICE**

**Filing Objections:** This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), "a party may file and serve specific written objections to a magistrate judge's proposed finding and recommendations within 14 days after being served a copy" of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. *See* Local Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).

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<sup>1</sup> The Petitioner has in fact not file an actual habeas petition in this matter. If he ultimately does so, it would be an entirely new case filing.